

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

\* \* \*

JOSEPH PALOVICH,

Petitioner,

v.

JO GENTRY, SR., et al.,

Respondents.

Case No. 2:18-cv-00240-APG-PAL

**ORDER**

Petitioner Joseph Palovich has submitted a counseled petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 and has paid the filing fee (ECF No. 1). The court has reviewed the petition pursuant to Habeas Rule 4, and it shall be docketed and served on respondents.

A petition for federal habeas corpus should include all claims for relief of which petitioner is aware. If petitioner fails to include such a claim in his petition, he may be forever barred from seeking federal habeas relief upon that claim. See 28 U.S.C. §2254(b) (successive petitions). If petitioner is aware of any claim not included in his petition, he should notify the court of that as soon as possible, perhaps by means of a motion to amend his petition to add the claim.

**IT IS THEREFORE ORDERED** that the Clerk **shall ELECTRONICALLY SERVE** the petition (ECF No. 1) on the respondents.

**IT IS FURTHER ORDERED** that the Clerk shall add Adam Paul Laxalt, Nevada Attorney General, as counsel for respondents.

1           **IT IS FURTHER ORDERED** that respondents shall file a response to the petition,  
2 including potentially by motion to dismiss, within **ninety (90) days** of service of the  
3 petition, with any requests for relief by petitioner by motion otherwise being subject to  
4 the normal briefing schedule under the local rules. Any response filed shall comply with  
5 the remaining provisions below, which are entered pursuant to Habeas Rule 5.

6           **IT IS FURTHER ORDERED** that any procedural defenses raised by respondents  
7 in this case shall be raised together in a single consolidated motion to dismiss. In other  
8 words, the court does not wish to address any procedural defenses raised herein either  
9 *in seriatum* fashion in multiple successive motions to dismiss or embedded in the  
10 answer. Procedural defenses omitted from such motion to dismiss will be subject to  
11 potential waiver. Respondents shall not file a response in this case that consolidates  
12 their procedural defenses, if any, with their response on the merits, except pursuant to  
13 28 U.S.C. § 2254(b)(2) as to any unexhausted claims clearly lacking merit. If  
14 respondents do seek dismissal of unexhausted claims under § 2254(b)(2): (a) they shall  
15 do so within the single motion to dismiss not in the answer; and (b) they shall  
16 specifically direct their argument to the standard for dismissal under § 2254(b)(2) set  
17 forth in *Cassett v. Stewart*, 406 F.3d 614, 623-24 (9th Cir. 2005). In short, no  
18 procedural defenses, including exhaustion, shall be included with the merits in an  
19 answer. All procedural defenses, including exhaustion, instead must be raised by  
20 motion to dismiss.

21           **IT IS FURTHER ORDERED** that, in any answer filed on the merits, respondents  
22 shall specifically cite to and address the applicable state court written decision and state  
23 court record materials, if any, regarding each claim within the response as to that claim.

24           **IT IS FURTHER ORDERED** that petitioner shall have **forty-five (45) days** from  
25 service of the answer, motion to dismiss, or other response to file a reply or opposition,  
26 with any other requests for relief by respondents by motion otherwise being subject to  
27 the normal briefing schedule under the local rules.  
28

1           **IT IS FURTHER ORDERED** that any additional state court record exhibits filed  
2 herein by either petitioner or respondents shall be filed with a separate index of exhibits  
3 identifying the exhibits by number. The CM/ECF attachments that are filed further shall  
4 be identified by the number of the exhibit in the attachment.

5           **IT IS FURTHER ORDERED** that the parties SHALL SEND courtesy copies of all  
6 exhibits in this case to the Clerk of Court, 400 S. Virginia St., Reno, NV, 89501, directed  
7 to the attention of "Staff Attorney" on the outside of the mailing address label.  
8 Additionally, in the future, all parties shall provide courtesy copies of any additional  
9 exhibits submitted to the court in this case, in the manner described above.  
10

11           DATED: 10 April 2018.

12  
13             
14           \_\_\_\_\_  
15           ANDREW P. GORDON  
16           UNITED STATES DISTRICT JUDGE  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28